

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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P/6

74-1044

United States Court of Appeals

For the Second Circuit.

GEORGE J. WEINER, JR.,
Plaintiff-Appellant,
against

PAUL MATSCHINER, MICHAEL KULUKUNDIS, CALLIOPE KULUKUNDIS, DONALD L. KUBA, JOSEPH ROSENTHAL, RAM BROADCASTING CORPORATION, RAM BROADCASTING OF CALIFORNIA, Inc., RAM BROADCASTING OF COLORADO, Inc., RAM BROADCASTING OF CONNECTICUT, Inc., RAM BROADCASTING OF FLORIDA, Inc., RAM BROADCASTING OF INDIANA, Inc., RAM BROADCASTING OF LOUISIANA, Inc., RAM BROADCASTING OF MASSACHUSETTS, Inc., RAM BROADCASTING OF MICHIGAN, Inc., RAM BROADCASTING OF MISSOURI, Inc., RAM BROADCASTING OF NEVADA, Inc., RAM BROADCASTING OF NEW MEXICO, Inc., RAM BROADCASTING OF OHIO, Inc., RAM BROADCASTING OF OREGON, Inc., RAM BROADCASTING OF SOUTH CAROLINA, Inc., RAM BROADCASTING OF TEXAS, Inc., and RAM BROADCASTING OF WASHINGTON, Inc.,
Defendants-Appellees.

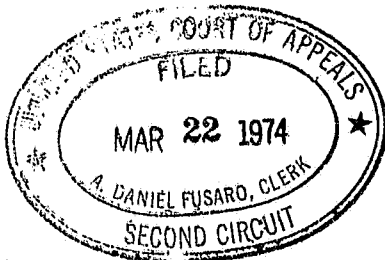
ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

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Attorneys for Defendants-Appellees, Matschiner,
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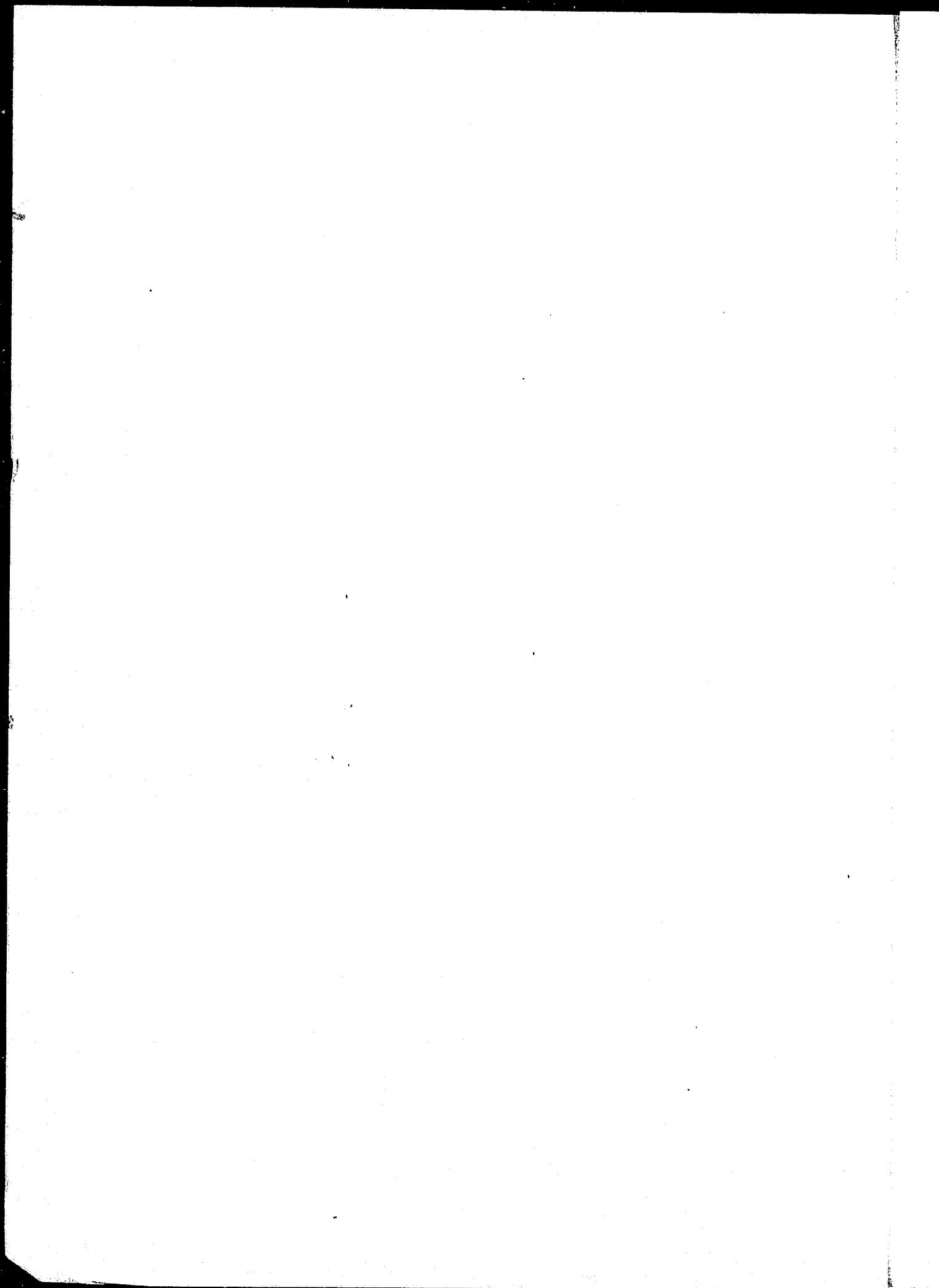
POLES, TUBLIN, PATESTIDES & STRATAKIS,
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RELEVANT DOCKET ENTRIES.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

GEORGE J. WEINER, JR., :

Plaintiff, :

-against- :

73 Civ. 1508 (LWP)

PAUL MATSCHINER, MICHAEL :
KULUKUNDIS, CALLIOPE KULUKUNDIS, :
DONALD L. KUBA, JOSEPH ROSENTHAL, :
RAM BROADCASTING CORPORATION, RAM :
BROADCASTING OF CALIFORNIA, INC., :
RAM BROADCASTING OF COLORADO, INC., :
RAM BROADCASTING OF CONNECTICUT, :
INC., RAM BROADCASTING OF FLORIDA, :
INC., RAM BROADCASTING OF INDIANA, :
INC., RAM BROADCASTING OF :
LOUISIANA, INC., RAM BROADCASTING :
OF MASSACHUSETTS, INC., RAM BROAD- :
CASTING OF MICHIGAN, INC., RAM :
BROADCASTING OF MISSOURI, INC., :
RAM BROADCASTING OF NEVADA, INC., :
RAM BROADCASTING OF NEW MEXICO, :
INC., RAM BROADCASTING OF OHIO, :
INC., RAM BROADCASTING OF OREGON, :
INC., RAM BROADCASTING OF SOUTH :
CAROLINA, INC., RAM BROADCASTING OF :
TEXAS, INC. and RAM BROADCASTING :
OF WASHINGTON, INC., :

Defendants. :

-----X

RELEVANT DOCKET ENTRIES

<u>Date</u>	<u>Proceedings</u>
4-9-73	Filed Complaint and issued Summons.
5-3-73	Filed Notice of Motion by Dfts. P. Matschiner, J. Rosenthal & Ram Companies. Re: Dismiss Complaint. Ret. 5/31/73.
5-8-73	Filed Notice of Motion by Dft. Donald L. Kuba. Re: Dismiss Complaint. Ret. 5/31/73.
5-25-73	Filed Affidavit in Opposition by George J. Weiner, Jr.
5-30-73	Filed Sur Reply Affidavit by Lloyd I. Isler.
5-30-73	Filed Reply Affidavit by Paul A. Matschiner in support of motion to dismiss the complaint.
11-9-73	Filed OPINION #39,987--Motion to dismiss counts 1, 2, 3, 4, is granted. Motion for Summary Judgment pursuant to Rule 56 denied. Defts. motion to dismiss the fifth count is denied. Pltff. is to post \$250.00 as security for costs.--Settle order on notice (5) days-- So Ordered - Pierce, J.
12-5-73	Filed Order that 1st, 2nd, 3rd, 4th, counts of pltffs. complaint in all respects dismissed with prejudice, defts. motion to dismiss is denied; judgment be entered in defts. favor dismissing 1st, 2nd, 3rd, 4th counts; pltff. within 30 days of this order either pay the court the sum of \$250, as indicated; Until such payment, etc. all other proceedings on the part of pltff. except to review or vacate this order are STAYED, ETC. PIERCE J. (mailed notice) Judgment Entered 12/5/73 Clerk. Ent. 12/6/73
12-14-73	Filed Undertaking for costs on appeal in the amount of \$250 by National Surety Corp. Bond No. 2430823.

RELEVANT DOCKET ENTRIES

<u>Date</u>	<u>Proceedings</u>
1-2-74	Filed Pltffs. Notice of appeal, from the order dated 12/3/73. (mailed notice)
1-22-74	Filed Aff. of Michael Patestides dated May 21, 1973.

VERIFIED COMPLAINT.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

GEORGE J. WEINER, JR., :

Plaintiff, :

-against- :

PAUL MATSCHINER, MICHAEL KULUKUNDIS, :
CALLIOPE KULUKUNDIS, DONALD L. KUBA, :
JOSEPH ROSENTHAL, RAM BROADCASTING :
CORPORATION, RAM BROADCASTING OF :
CALIFORNIA, INC., RAM BROADCASTING OF :
COLORADO, INC., RAM BROADCASTING OF :
CONNECTICUT, INC., RAM BROADCASTING :
OF FLORIDA, INC., RAM BROADCASTING OF :
INDIANA, INC., RAM BROADCASTING OF :
LOUISIANA, INC., RAM BROADCASTING OF :
MASSACHUSETTS, INC., RAM BROADCASTING :
OF MICHIGAN, INC., RAM BROADCASTING OF :
MISSOURI, INC., RAM BROADCASTING OF :
NEVADA, INC., RAM BROADCASTING OF NEW :
MEXICO, INC., RAM BROADCASTING OF :
OHIO, INC., RAM BROADCASTING OF OREGON, :
INC., RAM BROADCASTING OF SOUTH :
CAROLINA, INC., RAM BROADCASTING OF :
TEXAS, INC. and RAM BROADCASTING OF :
WASHINGTON, INC., :

Defendants. :

----- X

Plaintiff, complaining of the defendants, by his
attorney, LLOYD I. ISLER, respectfully alleges:

AS AND FOR A FIRST COUNT AGAINST
THE DEFENDANTS PAUL MATSCHINER AND
RAM BROADCASTING CORPORATION

1. Plaintiff is a citizen of Puerto Rico, resid-
ing at El Monte, Halto Rey, Puerto Rico.

VERIFIED COMPLAINT

2. Upon information and belief, the defendant PAUL MATSCHINER (hereafter "MATSCHINER") is a citizen and resident of the State of New York and is within the jurisdiction of

3. Upon information and belief, the defendant RAM BROADCASTING CORPORATION (hereafter "RAM") is a corporation organized and existing under the laws of the State of New York, having its principal place of business in the City of New York, and is within the jurisdiction of this Court.

4. Jurisdiction of this Court is invoked under 28 USCA 1332.

5. Prior to and at the times hereinafter mentioned, plaintiff was engaged in the telephone communications business and was recognized as an expert and an authority in that field.

6. In or about the latter part of 1965, the defendant MATSCHINER and an associate solicited plaintiff's advice and expertise in the communications field in connection with said defendant's proposed entry into the communications business, and the defendant MATSCHINER proposed and it was agreed that plaintiff would receive from the defendant MATSCHINER, in return for guiding said defendant in his proposed entry into the communications business and for his services as technical advisor and consultant, five (5%) per cent of the capital stock of any corporation that said defendant would organize or cause to be

VERIFIED COMPLAINT

organized to engage in the communications business and of which he would be a shareholder and that plaintiff would be reimbursed for expenses incurred in connection with such services.

7. Thereafter and pursuant to the aforesaid agreement, the defendant MATSCHINER organized or caused to be organized under the laws of the State of New York a corporation known as WORLD COMMUNICATIONS CORPORATION, in which the said defendant held a shareholding interest, and there were issued and delivered to the plaintiff fifteen (15) shares of the capital stock of the said WORLD COMMUNICATIONS CORPORATION.

8. Plaintiff, in accordance with the aforesaid agreement, rendered to defendant MATSCHINER and the said WORLD COMMUNICATIONS CORPORATION, advice, guidance and services and duly performed all of the terms and conditions of the agreement on his part to be performed.

9. In or about September 1969, the defendant MATSCHINER organized or caused to be organized the defendant RAM for the purpose of engaging in the communications business.

10. The defendant RAM was, at all times herein-after mentioned, and still is engaged in the communications business.

VERIFIED COMPLAINT

11. Upon information and belief, the defendant MATSCHINER is the record or beneficial owner of fifty (50%) per cent of all of the issued and outstanding shares of the capital stock of the defendant RAM.

12. The defendant MATSCHINER was at all times herein mentioned and still is the President, Treasurer and a director of the defendant RAM and is in control of its management and operations.

13. The defendants MATSCHINER and RAM have failed, refused and neglected to transfer, issue and deliver, or cause to be transferred, issued and delivered, to the plaintiff, any shares of the capital stock of the defendant RAM.

14. The capital stock of the defendant RAM has a large and special value and cannot be obtained in the open market.

15. Plaintiff has no adequate remedy at law.

AS AND FOR A SECOND COUNT
AGAINST THE DEFENDANTS PAUL
MATSCHINER, RAM BROADCASTING
CORPORATION, MICHAEL KULUKUNDIS
AND CALLIOPE KULUKUNDIS

16. Plaintiff repeats and realleges each and every allegation contained in paragraphs marked and numbered "1" through "8" hereof, with the same force and effect as if fully set forth at length herein.

VERIFIED COMPLAINT

17. Upon information and belief, the defendants MICHAEL KULUKUNDIS and CALLIOPE KULUKUNDIS are citizens and residents of the State of New York and are within the jurisdiction of this Court.

18. During the course of the plaintiff's rendition of advice, guidance and services, pursuant to the aforesaid agreement between the plaintiff and the defendant MATSCHINER, the advisability and profitability of expanding operations in the visual and communications business, including paging systems and radio common carriers, were discussed between and among plaintiff, the defendant MATSCHINER, and others associated with him, and the defendant MATSCHINER was introduced to and became aware of certain business opportunities and the profits to be derived therefrom.

19. Upon information and belief, the defendant MATSCHINER made known to the defendant MICHAEL KULUKUNDIS (hereafter "KULUKUNDIS") the advice and guidance furnished by plaintiff and others to whom the defendant MATSCHINER had been introduced by plaintiff, and discussed with him paging system and radio common carrier opportunities that thereafter became available.

20. Upon information and belief, the defendants MATSCHINER and KULUKUNDIS thereafter agreed to organize, or cause to be organized, the defendant RAM for the purpose of engaging in the communications business and reaping the benefits to be derived therefrom.

VERIFIED COMPLAINT

21. Upon information and belief, the defendants MATSCHINER and KULUKUNDIS planned, schemed, conspired and agreed to conceal from the plaintiff the fact that the defendant MATSCHINER had a shareholding interest in the defendant RAM for the purpose of depriving plaintiff of the shares of the capital stock of said defendant RAM and to which plaintiff was entitled under the aforesaid agreement between plaintiff and defendant MATSCHINER.

22. The defendants MATSCHINER and KULUKUNDIS, pursuant to the aforesaid plan, scheme, conspiracy and agreement, issued, or caused to be issued and delivered to the defendant CALLIOPE KULUKUNDIS (hereafter "CALLIOPE") all of the shares of the capital stock of the defendant RAM.

23. Upon information and belief, the defendants MATSCHINER, KULUKUNDIS and CALLIOPE agreed, in furtherance of said plan, scheme, conspiracy and agreement, that while all of the issued shares of the capital stock of the defendant RAM would be registered in the name of the defendant CALLIOPE, the defendant MATSCHINER was, in fact, the owner of fifty per cent (50%) of such issued shares and entitled to the benefits flowing from such ownership.

24. Upon information and belief, the defendants MATSCHINER and CALLIOPE are officers and directors of the defendant RAM, and the defendant MATSCHINER is in control of its management and operations.

VERIFIED COMPLAINT

25. The defendants MATSCHINER, KULUKUNDIS and CALLIOPE have failed, refused and neglected to transfer, issue and deliver, or cause to be transferred, issued and delivered, to the plaintiff, any shares of the capital stock of the defendant RAM.

26. The capital shares of the defendant RAM have a large and special value and cannot be obtained in the open market.

27. Plaintiff has no adequate remedy at law.

AS AND FOR A THIRD COUNT AGAINST
THE DEFENDANTS PAUL MATSCHINER,
MICHAEL KULUKUNDIS AND CALLIOPE
KULUKUNDIS

28. Plaintiff repeats and realleges each and every allegation contained in paragraphs "15" through "22" hereof with the same force and effect as if fully set forth at length herein.

29. The acts and conduct of the defendants MATSCHINER, KULUKUNDIS and CALLIOPE were designed to and intended to defraud plaintiff and were so deliberately conceived and executed.

30. By reason of the facts aforesaid, plaintiff has been deprived of the shares of the capital stock of RAM and has been deprived of an asset, the value of which is not presently determinable, but which is estimated, with request for leave to amend such claim, at Two Hundred Thousand (\$200,000) Dollars.

VERIFIED COMPLAINT

31. By reason of the facts aforesaid, plaintiff has suffered other and consequential damages for which relief is sought, in addition to punitive damages, in the sum of Three Hundred Thousand (\$300,000) Dollars.

AS AND FOR A FOURTH COUNT AGAINST
THE DEFENDANT PAUL MATSCHINER

32. Plaintiff repeats and realleges each and every allegation contained in paragraphs marked and numbered "1" through "8" hereof, with the same force and effect as if fully set forth at length herein.

33. The defendant Matschiner was at all times hereinafter mentioned a principal shareholder and President of WORLD COMMUNICATIONS CORPORATION (hereafter "WORLD").

34. Prior to and in or about April 1968, the defendant MATSCHINER was interested in the financial success of WORLD and desired to establish for World the reputation of an ably staffed and directed corporate business enterprise.

35. On information and belief, the defendant MATSCHINER knew or had reason to believe that plaintiff was well and favorably known in the communications business and industry as a person of high standing and reputation and that he had, for many years past, enjoyed positions of highest management and technical levels in the communications business and as an employee, for approximately twenty-two years, of the New York Telephone Company.

VERIFIED COMPLAINT

36. In or about April 1968, the defendant MATSCHINER, in furtherance of his aforesaid interest and desire, knowingly and without the consent of the plaintiff, wrongfully and unlawfully and contrary to the provisions of the Civil Rights Law of the State of New York, used plaintiff's name for trade purposes in the State of New York and elsewhere in connection with his business interests and his interest in WORLD, by stating and representing to Dun & Bradstreet, Inc. that plaintiff was a director of WORLD.

37. Upon information and belief, the defendant MATSCHINER made the aforesaid statement and representation knowing that plaintiff was not a director of WORLD and for the purpose of aggrandizing the benefits accruing from the use of plaintiff's name and reputation for his personal and private gain and benefit.

38. Upon information and belief, the defendant MATSCHINER knew that plaintiff was, at the time of said statement and representation, an employee of the New York Telephone Company.

39. By reason of the defendant MATSCHINER's statements and representations, as aforesaid, Dun & Bradstreet, Inc. thereafter did issue a report containing the statement that plaintiff was a director of WORLD, and such report did, upon information and belief, come to the attention of the New York Telephone Company.

VERIFIED COMPLAINT

40. The New York Telephone Company, acting on the belief that plaintiff was a director of WORLD as stated in the Dun & Bradstreet report, and claiming that the same constituted a conflict of interest on plaintiff's part, thereupon terminated plaintiff's employment.

41. By reason of the facts aforesaid, plaintiff was greatly damaged in that he lost gainful employment, lost the pension rights which would have accrued to him by reason of his continued employment, and was unable to gain other equivalent employment in the United States, and was obliged to relocate to and reside in Puerto Rick in order to gain such employment.

42. By reason of the facts aforesaid, plaintiff was humiliated and injured in his reputation.

43. Plaintiff has been damaged and is entitled to recover from the defendant MATSCHINER the sum of Three Hundred Fifty Thousand (\$350,000) Dollars.

AS AND FOR A FIFTH COUNT AGAINST
ALL DEFENDANTS

44. Plaintiff repeats and realleges each and every allegation contained in paragraphs marked and numbered "1", "2", "3", "4" and "16" with the same force and effect as if fully set forth at length herein.

VERIFIED COMPLAINT

45. Upon information and belief, the defendants DONALD L. KUBA and JOSEPH ROSENTHAL are citizens and residents of the State of New York and are within the jurisdiction of this Court.

46. Upon information and belief, the defendants, RAM BROADCASTING OF CALIFORNIA, INC., RAM BROADCASTING OF COLORADO, INC., RAM BROADCASTING OF CONNECTICUT, INC., RAM BROADCASTING OF FLORIDA, INC., RAM BROADCASTING OF INDIANA, INC., RAM BROADCASTING OF LOUISIANA, INC., RAM BROADCASTING OF MASSACHUSETTS, INC., RAM BROADCASTING OF MICHIGAN, INC., RAM BROADCASTING OF MISSOURI, INC., RAM BROADCASTING OF NEVADA, INC., RAM BROADCASTING OF NEW MEXICO, INC., RAM BROADCASTING OF OHIO, INC., RAM BROADCASTING OF OREGON, INC., RAM BROADCASTING OF SOUTH CAROLINA, INC., RAM BROADCASTING OF TEXAS, INC. and RAM BROADCASTING OF WASHINGTON, INC., all corporations organized and existing, respectively, under the laws of California, Colorado, Connecticut, Florida, Indiana, Louisiana, Massachusetts, Michigan, Missouri, Nevada, New Mexico, Ohio, Oregon, South Carolina, Texas and Washington; each is a citizen of the State of its respective incorporation and of the State of New York and all are subsidiaries of the defendant RAM and within the jurisdiction of this Court. Said defendants are hereinafter referred to as the "Subsidiary Corporations".

47. Upon information and belief, the defendants MATSCHINER, ROSENTHAL and KUBA are officers and/or directors of the defendants RAM and Subsidiary Corporations.

VERIFIED COMPLAINT

48. Upon information and belief, the defendants RAM and Subsidiary Corporations were organized by and as a result of agreement by and among the defendants MATSCHINER, KULUKUNDIS, CALLIOPE, ROSENTHAL and KUBA for the purpose of engaging in the communications business.

49. Upon information and belief, the defendants MATSCHINER, KULUKUNDIS, CALLIOPE, ROSENTHAL and KUBA were and still are interested in the financial success of the defendants RAM and Subsidiary Corporations.

50. Upon information and belief, the defendants MATSCHINER, KULUKUNDIS, CALLIOPE, ROSENTHAL and KUBA were desirous of obtaining for and on behalf of the defendants RAM and Subsidiary Corporations such licenses from the appropriate governmental commissions, bureaus or agencies as were required for the lawful and profitable acquisition, operation and conduct of radio common carrier businesses.

51. Upon information and belief, the defendants MATSCHINER, KULUKUNDIS, CALLIOPE, ROSENTHAL, KUBA, RAM and Subsidiary Corporations, knew or had reason to know that the Federal Communications Commission and other governmental commissions, bureaus or agencies acted on applications submitted to them on the basis of the information set forth in such applications and that among the criteria considered in deciding whether or not a license will be granted to an applicant, is the

VERIFIED COMPLAINT

applicant's qualifications, among which is the applicant's experience in the communications business and the qualifications of the persons concerned with the management and supervision thereof so as to assure that the applicant will effectively discharge the service responsibilities to the general public, as provided in all applicable laws including the Federal Communications Act.

52. At all times hereinafter mentioned and for many years prior thereto, the plaintiff was well and favorably known in the communications business and industry as a person of high standing and reputation, and for many years past had enjoyed positions of highest management and technical levels in the communications business.

53. Beginning in or about the latter part of 1969, and continually thereafter, the defendants MATSCHINER, KULUKUNDIS, CALLIOPE, KUBA, ROSENTHAL, RAM and the Subsidiary Corporations, knowingly and without the consent of the plaintiff, and contrary to the provisions of the Civil Rights Law of the State of New York, used plaintiff's name for trade purposes in the State of New York and elsewhere in connection with the business interests of the said defendants, in that they filed or caused to be filed with the Federal Communications Commission and other governmental commissions, bureaus and agencies having jurisdiction over the issuance of licenses to conduct, acquire or operate radio common carriers, certain applications and other papers and memoranda in

VERIFIED COMPLAINT

which it was claimed, stated or represented, that plaintiff was a full-time member of the staff of employees engaged by the defendants RAM and/or Subsidiary Corporations, and that plaintiff would be in charge of technical operations on behalf of said defendants RAM and Subsidiary Corporations, and oversee their major service responsibilities to the public.

54. Upon information and belief, the defendants MATSCHINER, KULUKUNDIS, CALLIOPE, ROSENTHAL, KUBA, RAM and Subsidiary Corporations, in connection with the filing of applications, papers and memoranda, as aforesaid, submitted to the Federal Communications Commission and other governmental commissions, bureaus and agencies, a resume of plaintiff's background, training and other eminent qualifications as an expert in the communications business.

55. The aforesaid statements, representations and submissions by the defendants were made by the defendants without plaintiff's consent.

56. The defendants made the aforesaid statements, representations and submissions to the Federal Communications Commission knowing that plaintiff was not a full-time member of the staff of the defendants RAM and/or Subsidiary Corporations and that there was no agreement for plaintiff to be in charge of the Subsidiary Corporations' technical operations, or to oversee their major service responsibilities to the general public.

VERIFIED COMPLAINT

57. The defendants acted and conducted themselves as aforesaid for the sole purpose of enhancing their prospects for and gaining approvals and licenses necessary or useful for the financial success of their respective business interests.

58. Upon information and belief, certain approvals and licenses applied for by or on behalf of the defendants were issued by the appropriate governmental commissions, bureaus or agencies, including the Federal Communications Commission.

59. By reason of the premises, defendants have been unjustly enriched by the unlawful use of plaintiff's name in that licenses to acquire, operate and conduct radio common carrier businesses were granted by the Federal Communications Commission and/or other governmental commissions, bureaus and agencies, and as a result of which said defendants have reaped substantial gains and profits, the amount of which is not presently known to plaintiff.

60. The defendants' acts and conduct, as aforesaid, were wilful and deliberate.

61. By reason of the facts aforesaid, plaintiff is entitled to an accounting of the profits and gains received or earned by the defendants and to recover damages, including punitive damages, and for which recovery is sought in the sum of Five Hundred Thousand (\$500,000.00) Dollars.

VERIFIED COMPLAINT

WHEREFORE, plaintiff demands judgment:

(i) Directing the defendants PAUL MATSCHINER and RAM BROADCASTING CORPORATION to issue and/or transfer to plaintiff such number of shares of the capital stock of the defendant RAM BROADCASTING CORPORATION, duly signed and in the form prescribed, as are required to effect in plaintiff ownership of five (5%) per cent of the capital stock of the defendant RAM BROADCASTING CORPORATION;

(ii) Directing the defendant RAM BROADCASTING CORPORATION to transfer on its books and records ownership in plaintiff of such number of shares of its capital stock as are required to effect in plaintiff ownership of five (5%) per cent of the capital stock of the said defendant;

(iii) Against the defendants PAUL MATSCHINER, MICHAEL KULUKUNDIS and CALLIOPE KULUKUNDIS, jointly and severally, in the sum of Three Hundred Thousand (\$300,000.00) Dollars on the third cause of action;

(iv) Against the defendant PAUL MATSCHINER in the sum of Three Hundred Fifty Thousand (\$350,000.00) Dollars on the fourth cause of action;

(v) Against all of the defendants, jointly and severally, in the sum of Five Hundred Thousand (\$500,000.00) Dollars on the fifth cause of action;

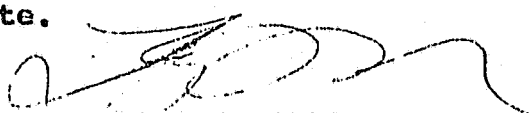
VERIFIED COMPLAINT

(vi) Directing all the defendants, and each of them, to advise the Federal Communications Commission and any other governmental commission, bureau or agency to which they or any of them had so represented, that plaintiff was not and is not in charge of technical operations on behalf of the Subsidiary Corporations, and restraining and enjoining the defendants, and each of them, from further so representing or from distributing or otherwise utilizing the resume of plaintiff's background, training and qualifications in the communications business;

(vii) That defendants, and each of them, be required to pay plaintiff the costs and reasonable expenses of prosecuting the causes of action alleged herein, including a reasonable counsel fee;

(viii) That defendants, and each of them, be required to pay plaintiff the costs and disbursements of this action; and

(ix) For such other and further relief as may be reasonable and appropriate.



LLOYD I. ISLER
Attorney for Plaintiff
Office & P. O. Address
405 Lexington Avenue
New York, New York 10017
(212) 986-4900

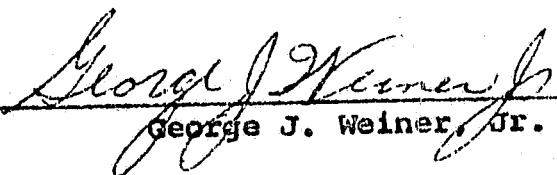
VERIFIED COMPLAINT

STATE OF NEW YORK)

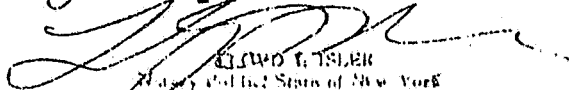
ss:-

COUNTY OF NEW YORK)

GEORGE J. WEINER, JR., being duly sworn, deposes and says that he is the plaintiff in the within action; that he had read the foregoing Complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.


George J. Weiner, Jr.

Sworn to before me this

30th day of March, 1973.

EDWARD T. TELLER
Notary Public State of New York
Notary No. 15000 - State of New York
Certificate filed in New York County
Commission Expires March 30, 19__

MEMORANDUM OPINION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GEORGE J. WEINER, JR., :

Plaintiff, :

- v - :

PAUL MATSCHINER, et al., :

Defendants. :

73 Civ. 1508
89987

-----X
APPEARANCES:

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Attorney for Defendants Michael and
Calliope Kulukundis

LAWRENCE W. PIERCE, D.J.

FILED
U.S. DISTRICT COURT
NOV 8 9 54 AM '73
S.D.N.Y.

MEMORANDUM OPINION

MEMORANDUM OPINION

This is a five count complaint against five individual and seventeen corporate defendants. The defendants have moved to dismiss the complaint pursuant to Rule 12(b)(6) of Fed.R.Civ.P. for failure to state a claim upon which relief can be granted or in the alternative for summary judgment under Rule 56 of Fed.R.Civ.P. Defendant Kuba has moved to dismiss the fifth count of the complaint as to him under Rule 12(b)(6) on the ground that he is neither an officer or director of the defendant RAM companies. Each count will be discussed separately.

A. First Count

The first count alleges that the plaintiff and defendant Matschiner agreed in the latter part of 1965 that the plaintiff would advise and guide Matschiner in his proposed entry into the communications field and in return plaintiff would receive 5% of the capital stock of any corporation that the defendant would organize or cause to be organized to engage in the communications business. It is further alleged that the defendant did organize such a corporation--the World Communications Corp.--and that pursuant to the agreement the plaintiff received 15 shares of the World stock. The plaintiff also claims that he fully performed

MEMORANDUM OPINION

his part of the agreement and that in or about September 1969 Matschiner organized another corporation--defendant RAM Broadcasting Corp.--to engage in the communications business but that Matschiner and RAM have failed to deliver to the plaintiff any of the shares of defendant RAM's capital stock.

The defendants urge that this count be dismissed as barred by the New York Statute of Frauds set forth in New York General Obligations Law §5-701(1). This section provides that an agreement which by its terms is not to be performed within one year from the making thereof is void unless it or some note or memorandum thereof is in writing and subscribed by the party to be charged therewith or by his lawful agent.

In Nat Nal Service Stations v. Wolf, 304 N.Y. 332, 335 (1952), the court stated that an agreement will not fall within the statute if its performance is possible within one year "however unlikely or improbable that may be." However, the terms of the agreement must be interpreted fairly and reasonably. In Re Galvin's Estate 266 N.Y.S. 113, 114 (Sur. Ct. 1953). Some of the factors to be considered in deciding whether the agreement is proscribed by the statute are: (1) the intention of the parties, i.e., whether they

MEMORANDUM OPINION

contemplated a permanent arrangement; (2) whether the agreement stipulates a definite time for performance; and (3) the endurance of the defendant's liability, that is, whether there is any event controlled by the parties which will terminate the contractual relation within a year. Martocci v. Greater N.Y. Brewery, 301 N.Y. 57, 62-63 (1950); see 56 N.Y. Jurisprudence §§15 et seq. (1967).

With these principles in mind, the Court concludes that the alleged agreement pleaded falls within the statute. Paragraph 6 of the complaint here alleges (and it is elsewhere admitted that the agreement was oral) that in return for his services the plaintiff was to receive "5% of the capital stock of any corporation that [the] defendant would organize or cause to be organized to engage in the communications business." It seems clear to this Court that the agreement pleaded envisioned a permanent arrangement of indefinite duration whereby the defendant would be continuously obligated to deliver to plaintiff the promised stock whenever he organized or caused to be organized any communications corporation. Such an agreement since not in writing is voided by the New York statute of frauds supra.

In opposing the motion to dismiss this count, the plaintiff does not contend that the agreement could possibly

MEMORANDUM OPINION

be performed within one year. In his memorandum of law he simply states that the statute does not bar his claim because it "does not arise under an employment agreement." The Court fails to see how this is helpful since the statute by its term is not restricted to employment agreements. The plaintiff also intimates that the statute is no bar because he has "fully performed." In his supplemental memorandum the plaintiff explicitly argues that the statute is satisfied by plaintiff's full performance. However, this is not the law in New York. Generally, full performance by one party of an oral agreement not to be performed within a year does not take it out of the statute of frauds. Uxvant v. Imco Poultry, Inc., 325 F.Supp. 677, 682-83 (E.D.N.Y. 1970), aff'd, 440 F.2d 1355 (1971) (per curiam); Rosen v. Greenfield Co., 269 N.Y.S. 2d 358, 359-60 (3d Dept. 1966). See 56 N.Y. Jurisprudence §§301 et seq. (1967).

Thus, the Court concludes that the motion to dismiss the first count of the complaint, as barred by the statute of frauds, is granted.

B. Second and Third Counts

In the second count the plaintiff alleges that defendants Matschiner and Michael Kulukundis agreed to organize defendant RAM corporation but to conceal from the plaintiff

MEMORANDUM OPINION

the fact that Matschiner had a shareholder interest in this corporation in order to deprive plaintiff of the shares of the capital stock of defendant RAM to which he was presumably entitled. To effectuate this alleged scheme or conspiracy, the plaintiff claims that all the shares of the capital stock of RAM were issued to defendant Calliope Kulukundis and registered in her name while it was agreed by these three defendants that Matschiner would be, in fact, the owner of 50% of such issued stock. The third count incorporates the allegations in count two and further claims that the acts and conduct of defendants Matschiner and Michael and Calliope Kulukundis were designed and intended to defraud the plaintiff. Defendants have moved to dismiss these two counts as barred by the statute of frauds and/or the statute of limitations.

These two counts are bottomed on the alleged oral agreement pleaded in count one. It has been held that, if proof of an agreement which is voided by the statute of frauds is essential to maintain an action, there can be no recovery. Dung v. Parker, 52 N.Y. 494 (1873); Subirana v. Munda, 282 N.Y. 726, 728 (1940). An agreement that is barred by the statute of frauds cannot be the foundation of an action. Wayne

MEMORANDUM OPINION

v. Benoist, 133 N.Y.S. 2d 337 (Sup. Ct. 1954), aff'd, 143 N.Y.S. 2d 627 (1st Dept. 1955). In order to recover under the second and third counts here the plaintiff must establish the existence of the void oral agreement. This he is not permitted to do. The second and third counts must, therefore, fall.

Moreover, there is yet another reason requiring dismissal. Regardless of the label which plaintiff may choose to put on them, these two counts plead the traditional tort of inducing a breach of contract. Such a claim is governed by the three year statute of limitations in N.Y. C.P.L.R. §214 (4). Von Ludwig v. Schiano, 258 N.Y.S. 2d 661 (2d Dept. 1965). The claim here accrued in 1969 when RAM Corporation was organized and it was barred by the applicable three year statute of limitations when the action was commenced in 1973. The fact that the plaintiff in his third count alleges that he was "defrauded" by the defendants is of no legal consequence since the bar of the statute is on the form of the action. Actions for inducing breach of contract are limited by the three year statute of limitations "no matter how the inducement was contrived, whether by fraud or any other means." Pale v. Kibrick, 120 N.Y.S. 2d 49, 51 (Sup. Ct. 1953). Accordingly, the second and third counts of plaintiff's

MEMORANDUM OPINION

complaint are dismissed.

C. Fourth Count

The fourth count against defendant Matschiner alone alleges that this defendant in or about 1968 in order to take advantage of the plaintiff's high business reputation used the plaintiff's name for trade purposes in violation of section 51 of the New York Civil Rights Law by misrepresenting to Dun & Bradstreet that the plaintiff was a director of World Communications, Inc. Based on this misrepresentation, Dun & Bradstreet published a report indicating that plaintiff was a director of World and as a result the plaintiff was discharged from his position with the New York Telephone Co. because of an alleged conflict of interest.

The defendant urges the dismissal of this count as barred by the one year statute of limitations in N.Y.C.P.L.R. §215 (3) since the claim, if any, is said to have accrued in or about April 1968. The plaintiff admits in his affidavit that the Dun & Bradstreet report was published on that date and that he knew thereof "as early as June 1968." He argues, however, that the first issuance of the reports is not the measuring date for the appropriate statute of limitations since there is an element of "continuing use" in that these reports are reissued and are continuously available to Dun &

MEMORANDUM OPINION

Bradstreet customers and subscribers. The plaintiff also contends that this count should be read as based on defendant Matschiner's tortious conduct for which recovery may be had apart from §51 of the New York Civil Rights Law. Lastly, the plaintiff requests that, should this Court decide that this count is barred by the statute of limitations, he be allowed to replead the count "in less limited fashion."

It is quite clear that this count is controlled by the explicit terms of C.P.L.R. §215(3) which provides that an action to recover damages for "a violation of the right of privacy under section fifty-one of the civil rights law" shall be commenced within one year. The fact that the publication may be continuously available will not serve to allow plaintiff to avoid the impact of the statute. Wolfson v. Syracuse Newspapers, Inc., 4 N.Y.S. 2d 640, (1938), aff'd, 279 N.Y. 716 (1939). Plaintiff's alternative reading of the count as one based on defendant Matschiner tortious wrong is of no assistance since the gravamen of the action would still be injury to reputation and such an action must be brought within the one year period. Morrison v. National Broadcasting Company, 19 N.Y. 2d 453 (1967). In view of this, the Court sees no purpose in allowing plaintiff to replead this count. Count four is, therefore, dismissed as barred by the statute of limitations and permission to replead is denied.

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D. Fifth Count

This count alleges violations of the New York Civil Rights Law §51 by all the defendants. The plaintiff claims that the five individual defendants, RAM corporation, and its sixteen subsidiary corporations were aware that in passing upon application for licenses the FCC and other governmental agencies consider the applicant's qualifications, his experience in the communications business and the qualifications of the persons concerned with the management and supervision of the business. It is alleged that in order to meet these criteria and enhance their prospects for obtaining the required licenses to conduct their business, all the defendants, beginning in or about 1969 and continuously thereafter, knowingly misrepresented in their applications for licenses with the FCC and other appropriate agencies that plaintiff was a full-time member of the staff of employees engaged by defendants RAM and/or its subsidiary corporations and that he would be in charge of technical operations on behalf of said defendants and oversee their major service responsibilities to the public. In connection with these applications, the defendants are said to have also submitted a resume of the plaintiff's background and experience. The plaintiff claims that the defendants were unjustly enriched by this

MEMORANDUM OPINION

alleged unlawful use of his name since the licenses were granted and as a result, it is claimed, the defendants received substantial gains.

The defendants admit that plaintiff's name and resume were included in the various filings. However, they allege that appropriate amendments were made to the applications eliminating any reference to the plaintiff. (Amendments filed by six of the RAM subsidiaries were attached as exhibits to defendant Marschiner's affidavit.) The defendants claim that the last use of plaintiff's name was made on December 7, 1971 and they, therefore, urge that the fifth count is also barred by the one year statute of limitations.

The plaintiff denies that these amendments did, in fact, delete all references to him from the applications. He also contends that no amendments at all were filed for the other nine RAM subsidiaries.

Before a motion to dismiss the complaint pursuant to Rule 12(b)(6) can be granted it must appear "to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim." Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2d Cir. 1968). This is not the case here. The motion to dismiss is, therefore denied. The alternative motion for

MEMORANDUM OPINION

summary judgment pursuant to Rule 56 of the Fed.R.Civ.P. is also denied since the Court finds that there are genuine issues of material facts.

Similarly, defendant Kuba's motion to dismiss the fifth count also presents factual issues since the plaintiff has vigorously contested his allegation that he is not an officer or director of the RAM companies. Accordingly, his motion is denied.

E. Costs

The defendants have also moved for an order requiring plaintiff to give security for costs in the sum of \$2,500 pursuant to Rule 2 of this Court on the ground that the plaintiff is a non-resident of the State of New York. Rule 2 of the Civil Rules of this Court provides, inter alia, that "[t]he court, on motion or on its own initiative, may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as it may designate." In exercising its discretion the Court may follow the forum state's practice particularly in cases involving a non-resident party.

6 Wright & Miller, Federal Practice & Procedure §2671 (1973). The usual amount required to be posted under the New York practice is \$250.00. See N.Y.C.P.L.R. §8503. Moreover, in

MEMORANDUM OPINION

the absence of special circumstances, "[s]ecurity for costs involves a relatively small liability often in the neighborhood of \$250.00" 6 Moore's Federal Practice §54.73 (1971). See, e.g., Leon v. Hotel & Club Employees Union Local 6, 26 F.R.D. 158 (S.D.N.Y. 1960).


The Court will grant defendant's demand for security for costs only in the amount of \$250.00.

For the reasons stated above the first, second, third and fourth counts of plaintiff's complaint are dismissed. Defendants' motion to dismiss the fifth count is denied. Finally, plaintiff is to post \$250.00 as security for costs.

Settle order on five days notice.

SO ORDERED.

Dated: New York, New York
November 5, 1973



LAWRENCE W. PIERCE
U. S. D. J.

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ORDER.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
Filed
Dec 5 1973

-----x
GEORGE J. WEINER, JR.,

:

S. D. OF N. Y.

Plaintiff, :

-against-

:

73 Civ. 1508 (LWP)

PAUL MATSCHINER, MICHAEL
KULUKUNDIS, et al.,

:

ORDER

:

Defendants.

:

-----x

Defendants having moved to dismiss the complaint pursuant to Rule 12(b)(6) of Fed.R.Civ.P. for failure to state a claim, or in the alternative to grant summary judgment for defendants under Rule 56 of Fed.R.Civ.P. and for an order requiring plaintiff to give security for costs pursuant to Rule 2 of this Court.

NOW on reading the complaint, and reading and filing the notice of motion dated May 1, 1973, the affidavit of Paul A. Matschiner, sworn to May 1, 1973 together with the exhibits annexed thereto, the affidavit of Charles L. Sylvester, sworn to April 27, 1973, the notice of motion dated May 7, 1973, the affidavit of Donald L. Kuba, sworn to May 7, 1973, the affidavit

ORDER

of Michael Patestides, sworn to May 21, 1973, the reply affidavit of Paul A. Matschiner, sworn to May 29, 1973, the affidavit of James A. Koerner, sworn to May 25, 1973, together with the exhibits annexed thereto, all in support of said motion, and the answering affidavit of George J. Weiner, Jr., sworn to May 17, 1973, together with the exhibits annexed thereto, the answering affidavit of Lloyd I. Isler, sworn to May 24, 1973, the surreply affidavit of Lloyd I. Isler, sworn to May 30, 1973, all in opposition to the motion, all with proof of due service, and Warshaw, Sylvester, Burstein & Franks having appeared in support of the motion by defendants Matschiner, Rosenthal, Kuba and Ram Companies and Poles Tublin, Patestides & Stratakis having appeared in support of the motion by defendants Michael and Calliope Kulukundis, and Lloyd I. Isler having appeared in opposition, and due deliberation having been had and upon the decision of the court filed herein and on motion of Warshaw, Sylvester, Burstein & Franks, attorneys for defendants Matschiner, Rosenthal, Kuba and Ram Companies, and on motion of Poles, Tublin, Patestides & Stratakis, attorneys for defendants Michael and Calliope Kulukundis, it is

ORDERED, that defendants' motion to dismiss the first, second, third and fourth counts of plaintiff's complaint be and

ORDER

hereby is granted, and it is further

ORDERED, that the first, second, third and fourth counts of plaintiff's complaint be and the same hereby are in all respects dismissed with prejudice, and it is further

ORDERED, that defendants' motion to dismiss the fifth count be and the same hereby is denied, and it is further

ORDERED, that judgment be entered herein in defendants' favor dismissing the first, second, third and fourth counts there being no just reason for delay, and it is further

ORDERED, that plaintiff within 30 days from the date of this order either pay into this court the sum of \$250 to be applied to the payment of the costs in this action awarded against plaintiff, or at his election that he file with the clerk of this court an undertaking with sufficient surety to the effect that he will pay on demand to defendants all costs which may be awarded against plaintiff in this action not exceeding the sum of \$250, and that he serve written notice of such payment or filing of the undertaking on defendants' attorneys, and it is further

ORDERED, that until such payment or filing and notice thereof, all other proceedings on the part of plaintiff except

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ORDER

to review or vacate this order be and the same hereby are stayed, and it is further

ORDERED, that defendants serve a copy of this order upon the attorney for plaintiff within 10 days from the date of this order.

Dated: New York, N. Y.
December 3, 1973.

s/ Lawrence W. Pierce
United States District Judge

Judgment Entered Dec 5 1973

s/ Raymond F. Burghardt
Clerk

NOTICE OF MOTION TO DISMISS COMPLAINT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
GEORGE J. WEINER, JR.,

Plaintiff,

73 Civ. 1508 (IWP)

-against-

NOTICE OF MOTION TO
DISMISS COMPLAINT

PAUL MATSCHINER, MICHAEL KULUKUNDIS,
et al.,

Defendants.

-----x
S I R:

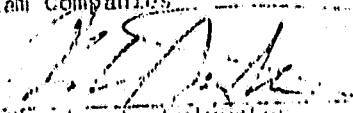
PLEASE TAKE NOTICE that upon the annexed affidavits of PAUL A. MATSCHINER, sworn to the 1st day of May, 1973, the exhibits annexed thereto and CHARLES L. SYLVESTER, sworn to the 27th day of April, 1973, and upon all the pleadings and proceedings heretofore had herein, the undersigned shall, on the call of the calendar of Hon. LAWRENCE W. PIERCE, on the 31st day of May, 1973 move this Court for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the action because the complaint fails to state a claim against defendants upon which relief can be granted or in the alternative to grant summary judgment for defendants under Rule 56, Rules of Civil Procedure, on the ground that there is no genuine issue as to any material fact and that defendants are entitled to a judgment as a matter of law, and for an order requiring plaintiff to give security for costs herein in the sum of \$2,500 pursuant to Rule 2 of this Court on the ground that plaintiff is a non-resident of the State of New York and for such other relief as may be proper.

Dated: New York, New York
May 1, 1973

Yours, etc.

WARSHAW, SYLVESTER, BURSTEIN & FRANKS
Attorneys for Defendants Paul Matschiner,
Joseph Rosenthal and the Defendant
Ran Companies

TO: LLOYD L. BIER, ESQ.
Attorney for Plaintiff
405 Lexington Avenue
New York, New York 10007

By: 
Charles L. Sylvester
A Member of the Firm
55 Fifth Avenue
New York, New York 10017
(212) 577-9100

AFFIDAVIT OF PAUL A. MATSCHINER IN SUPPORT OF MOTION
TO DISMISS COMPLAINT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

GEORGE J. WEINER, JR., :

Plaintiff, :

-against- :

73 CIV 1508 (LWP)

PAUL MATSCHINER, et al, :

Defendants.:

AFFIDAVIT IN SUPPORT OF
MOTION TO DISMISS COMPLAINT

-----x

STATE OF NEW YORK .)
 : ss.:
COUNTY OF NEW YORK)

PAUL A. MATSCHINER, being duly sworn, deposes and
says:

I am one of the individual defendants herein and I
am President of each of the named defendant Ram corporations
("Ram Companies"), and am fully familiar with the facts and
proceedings in this action.

This affidavit is submitted in support of my appli-
cation and that of the defendant Ram Companies for dismissal
of the complaint pursuant to Rule 12(b) of the Federal Rules
of Civil Procedure or in the alternative, to require plaintiff
to give security for costs.

Pleadings

The summons and complaint, a copy of which is annexed
hereto marked Exhibit A, was served on April 13, 1973. The
complaint for a first count against myself and defendant Ram
Broadcasting Corporation alleges that in 1965 plaintiff was
employed by me as a consultant to guide me into the communica-
tions business, that I agreed to pay plaintiff for his services
"five (5%) per cent of the capital stock of any corporation
that said defendant would organize or cause to be organized
to engage in the communications business" (Complaint, para-

AFFIDAVIT OF PAUL A. MATSCHINER IN SUPPORT OF MOTION
TO DISMISS COMPLAINT

graph 6) and that, thereafter, pursuant to the agreement, I did form such a corporation, namely World Communications Corporation, a New York corporation, the capital stock of which was issued 15 shares thereof to plaintiff and 50% to me. It is further alleged that in September 1969 I also formed defendant Ram Broadcasting Corporation, a New York corporation, to engage in the communications business, but that I refused to issue to plaintiff any shares of stock of defendant Ram.

It will be noted that there is no claim that the parties entered into a written agreement.

The second count incorporates the material allegations of the first count and pleads improper misappropriation by myself and defendants Ram Broadcasting Corporation, Michael Kulukundis and Calliope Kulukundis of "certain business opportunities" (Complaint, paragraph 18), that the individual defendants, myself and Michael Kulukundis organized defendant Ram Broadcasting Corporation to further the alleged scheme of wrongful misappropriation and that as a result plaintiff has been deprived of shares of defendant Ram Broadcasting Corporation in violation of the 1965 verbal agreement (Complaint, paragraphs 20, 21).

The third count incorporates the allegations of the second count and alleges that as a result of the improper misappropriation by the individual defendants, myself, Michael Kulukundis and Calliope Kulukundis, plaintiff has been deprived of an asset with an estimated value of at least \$200,000.

The fourth count pleads an action against me for alleged violation of plaintiff's right of privacy under the New York Civil Rights Law, Section 51, in the alleged unauthorized use of plaintiff's name in "April 1968" (Complaint,

AFFIDAVIT OF PAUL A. MATSCHINER IN SUPPORT OF MOTION
TO DISMISS COMPLAINT

paragraph 36), in a Dun & Bradstreet report resulting in damages to plaintiff for alleged injury to his professional reputation.

The Fifth count against all defendants pleads an action to recover damages for alleged violation of plaintiff's right of privacy under the New York Civil Rights Law, Section 51, in an alleged scheme by defendants "[b]eginning in or about the latter part of 1969 and continually thereafter" (Complaint, paragraph 53), for the alleged unlawful use of plaintiff's name in connection with the obtaining of licenses from the Federal Communications Commission.

The first, second and third count must be dismissed for three reasons: Firstly, plaintiff's remedy for any alleged lost corporate opportunities chargeable to acts of defendants must be limited to derivative suit. Plaintiff, as will be hereinafter shown, brought such derivative suit in August 1970 in the Supreme Court of the State of New York and the suit was dismissed by Justice Irving A. Saypol on March 9, 1973. It is noteworthy that Mr. Wiener's present action was instituted within five weeks of such dismissal. Secondly, by reason of the order of dismissal, these counts are barred on the grounds of res adjudicata and collateral estoppel. Finally plaintiff's claims, if any, to shares of stock of defendant Ram Broadcasting Corporation under an alleged verbal agreement are barred by the statute of frauds since the agreement was not in writing.

The fourth and fifth counts are barred by the one year statute of limitations applicable to actions to recover damages for a violation of the right of privacy under Section 51 of the New York Civil Rights Law (New York CPLR Section 215(3)).

AFFIDAVIT OF PAUL A. MATSCHINER IN SUPPORT OF MOTION
TO DISMISS COMPLAINT

We shall discuss these defenses in the balance of this affidavit and in the brief which we shall submit.

First, Second and Third Counts -
Derivative Action

These three counts are framed to recover damages for breach of a verbal employment agreement. Plaintiff seeks damages for alleged lost corporate opportunities chargeable to acts of defendants. Precisely the same allegations of lost corporate opportunities were the basis of a derivative shareholder action commenced in August 1970 by plaintiff and two other minority shareholders of World Communications Corporation. A copy of the complaint is annexed hereto marked Exhibit B. The main thrust of that complaint is the improper misappropriation by the individual defendants, myself, Michael Kulukundis and Calliope Kulukundis of "certain business opportunities" (Complaint, paragraph 6) and "confidential and secret engineering data" (Complaint, paragraph 9) belonging to defendant World. Plaintiffs allege (Complaint, paragraphs 8 and 11) that the individual defendants organized defendant Ram and other corporate entities to further the said alleged scheme of wrongful misappropriation.

In a second cause of action, it is alleged that I, as an officer and director of defendant World, breached my fiduciary obligations (Derivative Complaint).

Plaintiff conducted extensive pre-trial proceedings. I was examined on three separate occasions: January 13, 1971, January 28, 1971 and July 8, 1971. Defendant Michael Kulukundis was examined on July 21, 1971 and October 22, 1971; his mother, Calliope Kulukundis, was examined on October 21, 1971. Additionally, and prior to March 22, 1972, the books and records of defendants Ram Broadcasting and

AFFIDAVIT OF PAUL A. MATSCHINER IN SUPPORT OF MOTION
TO DISMISS COMPLAINT

World Communications were inspected for 3 days by the accounting firm of Gettry Marcus & Co. on behalf of plaintiffs.

Over a year and a half after commencing the derivative action, plaintiffs by notice of motion dated March 22, 1972 moved for a temporary receiver and a preliminary injunction. Plaintiffs having failed to produce one shred of evidence which would serve to establish their right to ultimate recovery in the action, the court after reviewing voluminous affidavits, denied plaintiff's motion. The Court's opinion is set forth at length:

"...The motion, insofar as it seeks a temporary receiver and a preliminary injunction, is denied. There are substantial factual and legal issues present which raise serious questions of plaintiffs' right to ultimate recovery herein. It appears, for example, that at the time of Ram's acquisition of the business opportunities, World's financial ability to take advantage thereof was doubtful. If this is proven the defendants were under no duty to acquire them for World. (Hauben v. Morris, 255 A.D. 35, aff'd 281 N.Y. 652.) Plaintiffs have not submitted any basis for finding that World's principals were obligated to come forth with additional funds to enable the acquisition. Nor have they adequately proven, for the purpose of issuance of the drastic and summary relief sought, that the business opportunities were in World's field of operations or that knowledge thereof was first brought to World's officers."
(Niedermeyer v. World Communications Corp.
Sup.Ct.N.Y.Co., Spec.Term, Part I, Fino, J.,
N.Y.L.J. 5/8/72)

Thereafter plaintiffs continued their unrestricted fishing expeditions and the continued deposition of defendant Michael Kulukundis was taken on June 19, 1972, the deposition of Mary Anstead as a non-party witness was taken in Boston, Massachusetts on September 14, 1972, and that of Michael Berk as a non-party witness was taken on October 31, 1972.

AFFIDAVIT OF PAUL A. MATSCHINER IN SUPPORT OF MOTION
TO DISMISS COMPLAINT

By then plaintiffs had taken 1337 pages of testimony with 133 exhibits.

By notice of motion dated December 4, 1972, defendants in the derivative action moved for summary judgment and the court granted defendants' motion and denied plaintiffs' cross-motion for a stay to take further depositions. The Court's opinions are set forth at length:

"Niedermeyer v. World Communications Corp.
~~This is a motion for an order granting summary judgment in favor of the defendants.~~

There is no opposition here. Instead, the plaintiffs contemporaneously move by order to show cause for an order staying this motion, at the same time seeking further disclosure of a non-resident lawyer witness. The denial of that motion requires the granting of this motion. Settle order. "

"Niedermeyer v. World Communications Corp.
~~Motion by the plaintiffs for an order directing the oral deposition of a non-resident witness is denied.~~

The witness is a Boston lawyer, who acted for the seller of a business claimed to have been diverted from the corporate defendant. The action is representative by minority stockholders for themselves and in the right of the corporation. The subject of the intended inquiry is a guarantee to the seller (who has already been deposed) by the defendant corporation. Of the latter, it has been held that if it had no means with which to make the acquisition, there would be no duty to make the acquisition in its behalf and of that the plaintiffs here had not shown that financial ability (Niedermeyer v. World Communications Corp., Sp. 1, N.Y.Co. Fine, J., N.Y.L.J. May 8, 1972, citing Hauben v. Morris, 255 App. Div. 35, aff'd 281 N.Y. 652). In the background of extensive disclosure of defendant's officers and principals and discovery of books and records by the plaintiffs, the proposed examination is deemed cumulative and unnecessary."

(Niedermeyer v. World, et al, Special Term, Part 1, Saypol, J., N.Y.L.J. 3/16/73).

By order of the Supreme Court, New York County entered on April 16, 1973, a copy of which is annexed hereto marked Exhibit C, plaintiffs' derivative action was dismissed.

AFFIDAVIT OF PAUL A. MATSCHINER IN SUPPORT OF MOTION
TO DISMISS COMPLAINT

Plaintiffs' remedy for any alleged loss of corporate opportunities chargeable to acts of defendants would be limited to a derivative suit. That derivative suit was determined adversely to plaintiff. It is evident that the order of dismissal of the Supreme Court of the State of New York in the derivative action is conclusive and bars plaintiff's attempt to relitigate the allegations of lost corporate opportunities.

First, Second and Third Counts -
Statute of Frauds

Plaintiff cannot now say that he was defrauded since he had no right to rely upon a contract which the law declared to be void. The statute of frauds stands as a barrier against recovery. Plaintiff testified in his deposition before trial in the derivative action that the claimed agreement was verbal (EBT, p. 12). By its terms, the alleged verbal agreement could not be performed within one year and, further, the claimed employment contract involving the transfer of title to shares of stock is a sale of securities which is unenforceable unless there is a signed writing. I categorically deny the existence of any such agreement. Mr. Wiener's case brought over 8 years after the alleged verbal agreement and five weeks after the dismissal of his derivative action, is an afterthought.

Fourth Count - Alleged Violation of
New York Civil Rights Law

Plaintiff's fourth count pleads an action against me alone for alleged violation of his right of privacy under the New York Civil Rights Law, Section 51. It is alleged

**AFFIDAVIT OF PAUL A. MATSCHINER IN SUPPORT OF MOTION
TO DISMISS COMPLAINT**

that as a result of the unauthorized use of plaintiff's name in April 1968 in a Dun & Bradstreet report of World Communications Corporation, plaintiff was fired by the New York Telephone Company on the ground of conflict of interest.

The circumstances surrounding the use of plaintiff's name in the Dun & Bradstreet report in April 1968 were as follows: I furnished Dun & Bradstreet with a list of the stockholders of World Communications Corporation including plaintiff herein. I informed Dun & Bradstreet that World Communications Corporation had not as yet formally elected a Board of Directors. Dun & Bradstreet did not clear its report with me and released a report mistakenly showing all the stockholders as directors. I promptly advised Dun & Bradstreet of its error and plaintiff's name was eliminated as a director.

Section 51 of the New York Civil Rights Law is only intended to prohibit use of a person's name "for advertising purposes or for the purposes of trade" without his consent. My attorneys advise me that the incidental use of plaintiff's name in the Dun & Bradstreet report concerning World Communications Corporation, of which plaintiff was a stockholder, is not such use as is prohibited by Section 51 and does not give rise to a right of action under that section. In any event, inasmuch as this count admittedly accrued in "April 1968" (Complaint, paragraph 36), it is barred by the one year statute of limitations (N.Y. CPLR Section 215(3)).

Fifth Count - Violation of New York Civil
Rights Law, Section 51

The fifth count against all defendants pleads an action to recover damages for alleged violation of plain-

AFFIDAVIT OF PAUL A. MATSCHINER IN SUPPORT OF MOTION
TO DISMISS COMPLAINT

plaintiff's right of privacy under the New York Civil Rights Law, Section 51. The main thrust of this count is an alleged scheme by all defendants commencing in the latter part of 1969 and continually thereafter to include plaintiff's name without his consent in applications filed by the defendant Ram Companies with the Federal Communications Commission.

The circumstances surrounding the use of plaintiff's name and resume are as follows: In the latter part of 1969 plaintiff's name and resume were inadvertently submitted by me to Arthur Stambler, Esq., Washington, D. C. counsel for the Ram Companies engaged in practice before the Federal Communications Commission, and included in various filings made on behalf of the Ram Companies with the Federal Communications Commission. When this was brought to my attention I instructed our Washington counsel to eliminate plaintiff's name from all applications. Copies of amendments dated May 20, 1970, January 11, 1971, January 19, 1971, February 12, 1971, August 30, 1971 and December 7, 1971 filed with the Federal Communication Commission are annexed hereto marked Exhibits D, E, F, G, H and I, respectively. Thus, the last use of plaintiff's name without his consent was terminated by December 7, 1971 and this count is similarly barred by the one year statute of limitations under N. Y. CPLR Section 215 (3).

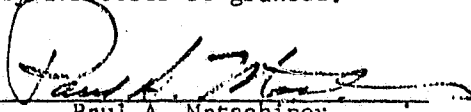
Security for Costs

Plaintiff, since 1970 and on the date this affidavit is made, is a non-resident of the State of New York. This appears from the complaint in which it is stated (paragraph 1) that plaintiff resides at El Monte, Hato Rey, Puerto Rico, and appears in his deposition before trial taken

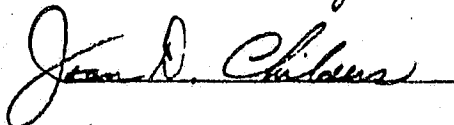
AFFIDAVIT OF PAUL A. MATSCHINER IN SUPPORT OF MOTION
TO DISMISS COMPLAINT

in the state derivative action (Wiener EBT, p. 15). Plaintiff has not been granted permission to proceed as a poor person, and no prior application has been made for security of costs. It is, therefore, respectfully requested, in the alternative, that an order be made requiring that plaintiff give security for costs in the sum of \$2,500 in view of the unusually complicated nature of these proceedings, and for such other and further relief as may be provided in this Court.

WHEREFORE, your deponent respectfully requests that defendants' application to dismiss the complaint or, in the alternative, for security for costs be granted.


Paul A. Matschiner

Sworn to before me this
1st day of May, 1973.



JOAN D. CHILDERS
Notary Public, State of New York
No. 03-RC05150
Qualified in Bronx County
Cert. filed with N.Y. Co. Clerk
Term Expires March 30, 1974

EXHIBIT B--COMPLAINT.

SUPERIOR COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JOHN M. NIEDERMAYER, VINCENT KUINER
and GEORGE WIENER, suing individually
and as shareholders of WORLD
COMMUNICATIONS CORPORATION and
suing on behalf of themselves and
all other shareholders of WORLD
COMMUNICATIONS CORPORATION similarly
situated and in the right of WORLD
COMMUNICATIONS CORPORATION,

Plaintiffs,

-against-

WORLD COMMUNICATIONS CORPORATION,
PAUL A. MATSCHINER, MICHAEL
KULUKUNDIS, CALLOPE KULUKUNDIS
and RAM BROADCASTING CORPORATION,

Defendants.

COMPLAINT

Plaintiffs complaining of the defendants by their
attorney, Lloyd I. Isler, respectfully allege:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned the defendant
World Communications Corporation (hereafter "World") was and
still is a corporation duly organized and existing under and by
virtue of the laws of the State of New York having its principal
place of business in the Borough of Manhattan, City and State
of New York.

2. The defendant World was organized in or about
1967 for the purpose of engaging, generally, in the electronic

EXHIBIT B

communication business and was authorized to issue 400 shares of common no par value stock.

3. Since on or about the date of World's organization and at all times hereinafter mentioned, the plaintiffs John M. Niedermeyer, Vincent Kuhnner and George Wiener have been and still are the actual owners and holders of record, respectively, of 29 shares, 3 shares and 15 shares of World's common no par value stock.

4. At all times hereinafter mentioned, the defendant Matschiner was and still is the president and a director of World and the defendant Michael Kulukundis (hereafter "Kulukundis") was and still is a stockholder of World.

5. The defendant Ram Broadcasting Corporation (hereafter "Ram") was and still is a corporation duly organized and existing under and by virtue of the laws of the State of New York having its place of business in the Borough of Manhattan, City and State of New York.

6. Upon information and belief, in or about September 1969, the defendants Matschiner and Kulukundis wrongfully and fraudulently planned, schemed, conspired and agreed to appropriate to themselves and for their personal gain certain business opportunities which World was authorized and able to undertake and which, from their nature, were within the scope and in the line of World's business and available to it.

EXHIBIT B

7. Pursuant to the aforesaid plan, scheme, conspiracy and agreement, the defendants Matschiner and Kulukundis caused the defendant Ram to be organized under the laws of the State of New York for the purpose of engaging, generally, in the same visual and aural communications business as that in which World was and is engaged.

8. Upon information and belief, the defendants Matschiner and Kulukundis, in order and with the intent to conceal their plan, scheme, conspiracy and agreement, as aforesaid, and to conceal and mask their connection with Ram and their control, domination and ownership of its shares, caused all of Ram's issued shares to be placed and registered in the name of the defendant Calliope Kulukundis, mother of the defendant Kulukundis.

9. Upon information and belief, the defendants Matschiner and Kulukundis, in pursuance of their plan, scheme, conspiracy and agreement, as aforesaid, wrongfully, improperly and fraudulently took, utilized and applied detailed, confidential and secret engineering data, plans, information and material prepared for World by World's agents, employees, representatives and consultants and the personnel, name, good will, offices, facilities and other properties of World and credits available to it and appropriated and diverted the same to the defendant Ram for the purpose and with the intent of benefiting themselves individually.

EXHIBIT B

10. Upon information and belief, the defendants Matschiner and Kulukundis, having no appropriated and diverted World's engineering data, plans, information and other material, property, assets and credits belonging to and available to World, caused and enabled the defendant Ram to enter into business and make divers contracts and agreements for the manufacture, purchase, leasing and licensing of visual and aural communications systems including mobile radiotelephone and paging systems, and to apply for and receive, from the appropriate governmental departments and agencies, certain licenses authorizing its acquisition, use, operation and maintenance of the same and frequencies for air to ground communications and carrier systems.

11. Upon information and belief that for the further effectuation of such purposes and in furtherance of the aforesaid plan, scheme, conspiracy and agreement, the defendants Matschiner and Kulukundis caused to be organized, in various states of the United States, other corporate entities for the purpose of acquiring and/or holding rights and licenses to visual and aural communications systems and frequencies for air to ground communications and carrier systems.

12. Upon information and belief such corporate entities (hereafter "other corporations") are owned and/or controlled and dominated by the defendants Matschiner, Kulukundis and Ram and such other corporations are the owners and holders of licenses and other rights to visual and aural communications

EXHIBIT B

systems and frequencies for air to ground communications and carrier systems.

13. The acquisitions and rights of the defendant Ram and the other corporations, referred to hereinabove, and the licenses and properties held or owned by them, together with the businesses conducted by each of them constitute and are business opportunities which were within World's fundamental knowledge and experience, adaptable to and consonant with World's business and its needs and aspirations and were and are of present and potential advantage to World and within its ability to pursue.

14. It was the duty of the defendant Matschiner, by reason of his fiduciary relationship to World as its president and director, and of which the defendant Kulukundis had knowledge, to acquire and deliver such business opportunities, properties and rights to World.

15. Upon information and belief, by reason of the acts and conduct of the defendants Matschiner and Kulukundis, the said defendants and the defendant Ram and the other corporations hereinabove referred to have acquired or become entitled to acquire rights and properties and have earned, derived and received, or have become entitled to earn, derive and receive, profits, income and other advantages aggregating large sums of money the amount of which is presently unknown to plaintiffs and said defendants have prevented World from acquiring such rights

EXHIBIT B

and properties and earnings, deriving and receiving said monetary advantages.

16. By reason of the facts aforesaid, the capital stock and licenses and other rights of the defendant Ram and the other corporations, referred to hereinabove, are and should be impressed with a trust in favor of World and are in equity the property of World and it is the duty of said defendants and the other corporations, to assign, transfer and set over said capital stock, licenses and rights and all of their rights, title and interest therein to World and to account to World in connection with all business transacted by the defendant Ram and the other corporations.

17. Plaintiffs did not make any demand upon the defendant World through the individual defendant Matschiner or its officers and directors that it commence an action against the defendants herein for the reason that the defendant Matschiner has arrogated management and control of World to himself and has disregarded the efforts and attempts to give voice to the other directors of World, so that it would be futile and useless to believe that he would bring an action against himself and the other defendants with whom he is so closely allied.

18. Plaintiffs have no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION
AGAINST THE DEFENDANT MATSCHINER

19. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs "1", "2", "3", "4", "5",

EXHIBIT B

"17" and "18", with the same force and effect as if fully set forth at length herein.

20. It was the duty of the defendant Matschiner, as an officer and director of World, to honestly, carefully and diligently administer the affairs of World, to see that its property, rights, business opportunities and effects were not wasted or squandered and to faithfully and diligently perform all duties devolving upon him as such officer and director.

21. Upon information and belief, heretofore and in or about September 1969, the defendant Matschiner planned, schemed and formed the design and purpose to waste, dissipate and improperly use World's funds, rights, credits, business opportunities, capital and assets and to permit the same to be utilized, in violation of his trust, for his private gain and purposes and for the private gain and purposes of the defendant Kulukundis.

22. Upon information and belief, the defendant Matschiner since in or about September 1969, caused the funds, rights, credits, business opportunities, capital and assets of World to be improperly, unlawfully, and fraudulently expended, squandered, dissipated and used to and for the benefit of himself and the defendants Kulukundis and Ram in the following respects:

(a) In utilizing and allowing the utilization of confidential and secret engineering data, plans, information and material prepared for World

EXHIBIT B

by its agents, employees, representatives and consultants.

(b) In utilizing and allowing the utilization of World's personnel, name, good will, offices, facilities and credits available to it.

(c) In arranging for the withholding from World all monies and credits theretofore arranged to be provided to it by the defendant Kulukundis and diverting the same to the defendant Ram.

(d) In paying out of World's funds, capital and assets monies due to third persons and parties by reason of the business activities of the defendant Ram and the other corporations in which he has an interest.

(e) In permitting the resources and property of World to be utilized and exploited for the benefit of the defendant Ram and the other corporations in which he has an interest.

(f) In diverting to the defendant Ram and the other corporations in which he has an interest and allowing them to obtain, acquire and engage in business opportunities which World was authorized and able to undertake and which, from their nature, were within World's scope and in line with its business and available to it.

EXHIBIT B

(g) In diverting to the defendant Ram and the other corporations in which he has an interest and allowing them to apply for and receive, from various governmental departments and agencies, certain licenses and rights authorizing their acquisition, use, operation and maintenance of visual and aural communications systems including mobile radio-telephone and paging systems and frequencies for air to ground communications and carrier systems which were within World's scope and ability to pursue.

(h) In diverting to the defendant Ram and the other corporations in which he has an interest business opportunities and rights which were within World's fundamental knowledge and experience, adaptable and consonant with its business needs and aspirations and which were and are of present and potential advantage to it.

23. The properties, rights, credits, services and business opportunities so diverted, utilized, expended and disbursed, as aforesaid, were fraudulently and wilfully caused to be so diverted, utilized, expended and disbursed with the purpose and intent of unlawfully enriching the defendants Matschiner and Kulukundis and constitute a fraudulent and unlawful diversion and misappropriation of World's property, rights, credits, services and business opportunities.

EXHIBIT B

24. By reason of the facts aforesaid, plaintiffs have suffered damage the exact amount of which plaintiffs are unable to state and which may be only ascertained upon the trial of this action.

WHEREFORE, plaintiffs demand judgment:

- (i) That the shares of capital stock of the defendant Ram and the other corporations owned and/or controlled by the defendants Matschiner, Kulukundis and Calliope Kulukundis, or in which they have an interest, and any licenses held or owned by them, be impressed, to the extent of their interest therein, with a trust in favor of World and that said shares and licenses be adjudged to be the property of World and that the said defendants and other corporations be ordered and directed to assign and transfer to World all such shares, interests and licenses.
- (ii) That the proceeds, in whatever form received by the defendants Matschiner, Kulukundis, Calliope Kulukundis, Ram and the other corporations, from the use, sale or other disposition of such shares and licenses, be impressed with a like trust and that such proceeds be adjudged to be the property of World and that said defendants and the other corporations be ordered and directed to turn over and account to World for such proceeds.

EXHIBIT B

(iii) That the defendants Matschiner, Kulukundis, Calliope Kulukundis, Ram and the other corporations be ordered and adjudged to account to World for all sums of money received by them or paid over for their benefit, in any and all manner or form whatsoever, out of the funds, capital and assets of World.

(iv) That the defendants Matschiner, Kulukundis, Calliope Kulukundis, Ram and the other corporations be ordered to account to World for all profits, monies and other pecuniary advantages derived by them from the use of World's properties, data, personnel, name, good will, offices and facilities and the credits available to and/or derived from World.

(v) That judgment for damages be rendered against the defendants Matschiner, Kulukundis, Calliope Kulukundis and Ram, and each of them, for the amount in which World and the plaintiffs and other shareholders of World similarly situated have been damaged by reason of the acts and conduct of such defendants as hereinabove alleged.

(vi) That pending the determination of this action, the defendants Matschiner, Kulukundis, Calliope Kulukundis and Ram be enjoined and restrained from

EXHIBIT B

assigning, transferring or in any way disposing of the shares of RMA and the other corporations owned and/or controlled by them and any rights and licenses granted to them, or any of them, for visual and aural communications systems, including radiotelephone and paging systems and frequencies for air to ground communications and carrier systems, or any other assets standing in their names.

(vii) That plaintiffs have such other and further relief as may be just.

(viii) That defendant World be required to pay to plaintiffs the reasonable expenses incurred in connection with the prosecution of this action, including counsel fees.

(ix) That plaintiffs have judgment against the defendant Matschiner for such damages as may be ascertained upon the trial of this action.

LLOYD I. ISLER
Attorney for Plaintiffs
Office & P. O. Address
405 Lexington Avenue
New York, N. Y. 10017

EXHIBIT B

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JOHN M. NIEDERMEYER, being duly sworn, deposes and
says:

I am one of the plaintiffs herein. I have read the
foregoing complaint and the same is true to my own knowledge
except as to those matters which are alleged to be upon informa-
tion and belief and as to such matters I believe them to be true.

Sworn to before me this

15th day of July, 1970.

John M. Niedermeier
JOHN M. NIEDERMEYER

CLAIRE FERN
Notary Public, State of New York
No. 0347430 Qual. in Bronx Co.
Certificate filed in New York County
Commission Expires March 30, 1972

EXHIBIT C--ORDER.

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of New York, at the Court-house, Pearl and Centre Streets, Borough of Manhattan, City of New York, on the 13th day of March, 1973.

P R E S E N T :

HONORABLE IRVING H. SAYPOL

Justice.

-----x
JOHN M. NIEDERMAYER, VINCENT KUINER
and GEORGE WIENER, suing individually
and as shareholders of World Communi-
cations Corporation and suing on
behalf of themselves and other share-
holders of WORLD COMMUNICATIONS
CORPORATION similarly situated and
in the right of WORLD COMMUNICATIONS
CORPORATION,

Index No. 16002/70

Plaintiffs,

-against-

ORDER

WORLD COMMUNICATIONS CORPORATION,
PAUL A. MATSCHINER, MICHAEL
KULUKUNDIS, CALLIOPE KULUKUNDIS
and RAM BROADCASTING CORPORATION,

Defendants.
-----x

Defendants, Paul A. Matschiner, Michael Kulukundis,
Calliope Kulukundis and Ram Broadcasting Corporation, having
duly moved this court for summary judgment in favor of defend-
ants and against plaintiffs, pursuant to Rule 3212 of the Civil
Practice Law and Rules, upon the grounds that there are no tri-
able issues of fact, and that there is no merit to the causes
of action asserted in the complaint, and plaintiffs having cross-
moved by order to show cause for an order staying the motion
for summary judgment and said motion and cross-motion having
regularly come on to be heard;

EXHIBIT C

EXHIBIT C

NOW, on reading the complaint and answers of defendants Paul A. Matschiner and Ram Broadcasting Corporation, and reading and filing the notice of motion dated December 4, 1972, the affidavit of Paul A. Matschiner, sworn to December 4, 1972, together with the exhibits annexed thereto, the affidavit of Michael Kulukundis, sworn to December 5, 1972, the affidavit of Calliope Kulukundis, sworn to December 5, 1972, together with the exhibit annexed thereto, in support of said motion, the order to show cause ^{signed by Hon. Harold P. Culver} dated December 12, 1972, the affirmation of Lloyd I. Isler, dated December 11, 1972, together with the exhibits annexed thereto, in support of the cross-motion, the answering affidavit of Donald L. Kuba, sworn to December 15, 1972, together with the exhibits annexed thereto, in support of the motion, the supplementary affirmation of Lloyd I. Isler, dated December 20, 1972, together with the exhibit annexed thereto, in support of the cross-motion, and the supplementary affidavit of Donald L. Kuba, sworn to December 22, 1972, in support of the motion, all with proof of due service, and WARSHAW, SYLVESTER, BURSTEIN & FRANKS, having appeared in support of defendants' motion and in opposition to plaintiffs' cross-motion, and LLOYD I. ISLER, ESQ., attorney for plaintiffs, having appeared in support of plaintiffs' cross-motion, and there being no opposition to defendants' motion; and due deliberation having been had thereon and upon the decision of the court filed herein, and, on motion of WARSHAW, SYLVESTER, BURSTEIN & FRANKS, attorneys for defendants, Paul A. Matschiner and Ram Broadcasting Corporation and upon motion of POLES, TUBLIN, PATESTIDES & STRATAKIS, attorneys for defendants Michael Kulukundis and Calliope Kulukundis, it is

65a

EXHIBIT C

from order granting summary judgment
ORDERED that defendants' motion be and the same hereby
is in all respects granted, and it is further

ORDERED that plaintiffs' cross-motion be and the same
hereby is in all respects denied, and it is further

ORDERED that the costs and disbursements of this ac-
tion be taxed by the Clerk of the Court, and the Clerk of this
Court is hereby directed to enter judgment ^{accordingly} as aforesaid.

E N T E R

T. H. S.
Jrs.C.

Filed
April 16, 1973
New York
County Clerk's Office

AFFIDAVIT OF CHARLES L. SYLVESTER IN SUPPORT OF
MOTION TO DISMISS COMPLAINT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
GEORGE J. WEINER, JR.,

Plaintiff,

73 Civ 1508 (LWP)

-against-

AFFIDAVIT

PAUL MATSCHINER, MICHAEL KULUKUNDIS,
et al.,

Defendants.

-----x
STATE OF NEW YORK)
; ss.:
COUNTY OF NEW YORK)

CHARLES L. SYLVESTER, being duly sworn, deposes and says:

I am a member of the firm of Warshaw, Sylvester, Burstein & Franks, attorneys for defendants Paul Matschiner, Joseph Rosenthal and the defendant Ram Companies, and am fully familiar with the facts stated herein.

Parts of the examination before trial of George Weiner, taken on October 9, 1970, in the New York Supreme Court derivative action, which pertain to the issues involved herein, are as follows:

Page 11, Line 24 - Page 15, Line 22

"Q Mr. Weiner, in 1968, what was your principal employment?

MR. ISLER: What part of 1968?

A Up until June of 1968, I was employed by the New York Telephone Company as a direct plant superintendent at Kennedy Airport.

Q Were you on the payroll of World Communications Corporation in 1968?

A Before June, 1968, I received no monetary compensation from World Communications.

Q After 1968?

A In June of 1968, I was separated from the payroll of the New York Telephone Company for a conflict of interests. The charge of conflict of interest stemmed from a Dun & Bradstreet report made by Mr. Matschiner in behalf of World Communications stipulating me as a director, as a member of the board of directors of World Communications, which I was not.

**AFFIDAVIT OF CHARLES L. SYLVESTER IN SUPPORT OF
MOTION TO DISMISS COMPLAINT**

I was a stockholder. I was a technical advisor and consultant.

Q After June, 1968, were you on the payroll of World Communications Corporation?

A I received a consulting fee through a verbal agreement with Mr. Matschiner. Mr. Matschiner was aware of legal obligations and financial obligations I had.

I told him I was getting outside and what my problems were, and we agreed upon a stipulated amount to be paid weekly.

Q What was that stipulated amount?

A \$120

Q For how long did you receive this amount?

A I don't know how long I received it, but subsequent to this, checks came back to me, that there were insufficient funds in the bank.

Checks were issued to me against an account that was closed out. The bank told me the account had been closed. This was World Communications account.

These checks, I believe, are still in my possession. Subsequent to this, I talked to Mr. Matschiner again, and he issued some checks on the Totaphone Corporation, which I cashed and used to surplant the income that was sorely needed at the time.

My loss of income was due to Mr. Matschiner trying to use my name, which was well recognized in the communications business and well recognized throughout the Bell System.

He also put Mr. Volkimer's name on the Dun & Bradstreet report. Mr. Volkimer was a retired engineer from the Bell Telephone Company who first developed a ship-to-shore radio, and once again, as renowned in the mobile telephone business.

My name was put in without my consent or any knowledge on my part. Mr. Matschiner and I had many violent arguments

AFFIDAVIT OF CHARLES L. SYLVESTER IN SUPPORT OF
MOTION TO DISMISS COMPLAINT

about this. He caused my severance from the New York Telephone Company.

Q Did there come a time subsequent to June of 1968 when you requested World Communications Corporation to pay certain medical expenses that you had incurred?

A Yes, sir, I did.

Q Would you please tell us about that?

A I was working in Puerto Rico and I had an accident and I asked Mr. Matschiner to--I wasn't asking him to pay for the expenses, but I was asking him to pay for the weeks that he had committed to me at \$120 a week that he had not paid me so that I could take care of the expenses that I had.

Q Did you request World Communications to pay medical expenses in the sum of \$2500?

A I told Paul what the bills were and I requested the money that he had verbally agreed to pay me so that I could take care of the bills.

Q Did World Communications then make payments to you at \$500 a month?

A He gave me five checks at \$500 apiece.

Q Did any of those checks bounce?

A Yes, they did. I did not ask Paul for the money for the medical expenses, but to pay me what was due me by verbal agreement.

Q Do you still hold any of these \$500 checks or did they all clear?

A I believe they are all cleared now.

Q Where's your present employment?

A Right now I work for 'ITT'.

AFFIDAVIT OF CHARLES L. SYLVESTER IN SUPPORT OF
MOTION TO DISMISS COMPLAINT

Q In what capacity?

A In Puerto Rico.

Q In what position?

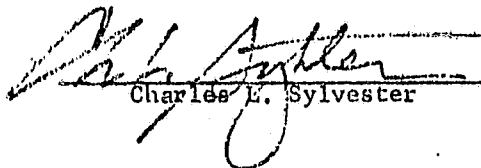
A In plant operations in Puerto Rico.

Q Were you employed in 1969?

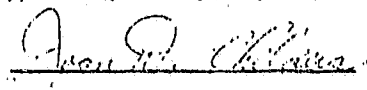
A Yes, I was. I worked for Manhattan Cable and Television.

Q What was your position in Manhattan Cable?

A I was acting there as director for construction for
Manhattan Cable doing a distribution cable plan for cable
television."


Charles L. Sylvester

Sworn to before me this
27th day of April, 1973.



JOHN H. CHILDERS
Notary Public, State of New York
No. 03-EG85150
Qualified in Bronx County
Cert. filed with N.Y. Co. Clerk
Term Expires March 30, 1976

AFFIDAVIT OF GEORGE J. WEINER, JR. IN OPPOSITION TO
MOTION TO DISMISS COMPLAINT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x		
GEORGE J. WEINER, JR.,	:	<u>ORAL ARGUMENT REQUESTED</u>
Plaintiff,	:	<u>AFFIDAVIT IN OPPOSITION</u>
-against-	:	
PAUL MATSCHINER, et al.,	:	73 Civ. 1508 (LWP)
Defendants.	:	
----- x		

COMMONWEALTH OF PUERTO RICO)
DISTRICT OF) ss:
MUNICIPALITY OF) SAN JUAN)

GEORGE J. WEINER, JR., being duly sworn, deposes
and says:

1. I am the plaintiff herein and submit this affidavit in opposition to the defendants' motions to dismiss my complaint on the alternatively stated grounds of (a) failure to state a cause of action, and (b) that there is no genuine issue as to any material fact.

The basic flaw to defendants' motions is their total misreading and mischaracterization of my complaint - and it is upon so erroneous a base that the defendants construct their arguments for dismissal.

2. The pervading thread of the defendants' motions is that my complaint is one for "improper misappropriation of cer-

AFFIDAVIT OF GEORGE J. WEINER, JR. IN OPPOSITION TO
MOTION TO DISMISS COMPLAINT

tain business opportunities" (see Matschiner Aff., pp. 1-4).

Based upon that cast of my complaint, the defendants urge the dismissal thereof on the ground that a derivative suit, instituted in the Supreme Court of the State of New York, County of New York, by the stockholders of WORLD COMMUNICATIONS CORPORATION, was "dismissed"*, and that a dismissal of my action should therefore follow.

3. A reading of my complaint plainly reveals that there is not a single statement of, or allusion to, "misappropriation of business opportunities" in the first three counts. My claims, as asserted in the first three counts, are based upon an agreement made by MATSCHINER, personally, and which provided for my receiving 5% of the capital stock of "any corporation" that MATSCHINER "will organize or cause to be organized to engage in the communications business and of which he would be a stockholder" (Complaint, ¶6). My claim, as asserted in the first cause of action, is a distinct pleading of a personal right accruing to me under an agreement with MATSCHINER, personally, and has no relation at all to the "class action" claims asserted in the derivative suit by the stockholders of WORLD COMMUNICATIONS CORPORATION, in which it was charged that the defendant MATSCHINER violated his fiduciary obligations as the President and a director of WORLD, in diverting certain business opportunities from WORLD, and wasting corporate assets.

4. It would appear, therefore, that the defendants are parading before this Court the fact of another suit and,

* The dismissal of that suit, incidentally, was based upon an alleged "default" in opposing a motion for summary judgment. The order and judgment of dismissal are now the subject of an as yet undecided motion to vacate.

AFFIDAVIT OF GEORGE J. WEINER, JR. IN OPPOSITION TO
MOTION TO DISMISS COMPLAINT

incidentally, a decision by ex-Justice Fino in that suit, which has no possible relevancy in this action, to misdirect, if not actually mislead, this Court into believing that there exists a basis in law for dismissal of my complaint because of the derivative stockholders' action involving WORLD COMMUNICATIONS CORPORATION. Even absent such an intent, the defendants' presentation is, in the least, designed to obscure the plain difference of the actions.

5. The second and third counts of my complaint are, also, completely separate and distinct from the issues posed by the stockholders of WORLD COMMUNICATIONS CORPORATION in the stockholders' derivative suit. My claims in these two counts arise from the fact that the defendants MICHAEL KULUKUNDIS and CALLIOPE KULUKUNDIS conspired and agreed with the defendant MATSCHINER to conceal the fact of his ownership of shares of the defendant RAM BROADCASTING CORPORATION so as to delude me into believing that I was not entitled to receive 5% of the capital stock of the defendant RAM BROADCASTING CORPORATION. The asset which I claim, in this action, has been withheld from me is 5% of the capital stock of RAM BROADCASTING CORPORATION and not the "business opportunities" which the shareholders of WORLD claimed were diverted from WORLD by the defendant MATSCHINER. Nobody, including me, made any such claim in the stockholders' suit.

6. The defendant MATSCHINER veers from his faulty analysis of my complaint as one based upon "misappropriation of

AFFIDAVIT OF GEORGE J. WEINER, JR. IN OPPOSITION TO
MOTION TO DISMISS COMPLAINT

business opportunities" and also characterizes it as one "framed to recover damages for breach of a verbal employment agreement" (MATSCHINER Aff., p. 4). This secondary view of my complaint, apart from being inconsistent with the earlier analysis thereof as one based upon "misappropriation of business opportunities", is equally strained. My pleading is plain and specific. I was not "employed" by the defendant RAM BROADCASTING CORPORATION and I am not seeking to "recover damages for breach of a verbal employment agreement". The right which I seek to enforce under a fully performed agreement, is the transfer to my name of 5% of the capital stock of the defendant RAM. It must be noted, in this connection, that the defendant MATSCHINER does not deny the allegation in my complaint that I have duly performed all of the terms and conditions of the agreement on my part to be performed (Complaint, ¶8), and that the defendant MATSCHINER did, in fact, issue and deliver to me 5% of the capital stock of WORLD COMMUNICATIONS CORPORATION, which was the first corporation organized by him to engage in the communications business and of which he was a shareholder. Annexed hereto as Exhibit "1" is a photocopy of Certificate No. "A-1" for fifteen (15) shares of WORLD COMMUNICATIONS CORPORATION - reflecting that fact.

Hence, MATSCHINER's alternative view of my complaint as one based on the "breach of an employment agreement" is but an artificial and untenable construction upon which he seeks to build a defense of the statute of frauds. This attempt

AFFIDAVIT OF GEORGE J. WEINER, JR. IN OPPOSITION TO
MOTION TO DISMISS COMPLAINT

to invoke the statute of frauds, without any apparent basis therefor, is highlighted, I am advised by my attorney, by MATSCHINER's alternative reliance upon Uniform Commercial Code, §8-319, which relates to the "sale" of securities. Surely, no part of my complaint relates to a "sale" of securities.

7. As to MATSCHINER's denial of the "existence" of an agreement upon which my complaint is bottomed (MATSCHINER Aff., p. 7) - apparently made in support of his alternative request for summary judgment under Rule 56 - I am advised by my attorney that his denial raises the very issue of such an agreement. This precludes the grant of summary judgment.

It may be observed, incidentally, that MATSCHINER's denial is, on its face, incredible, because there was actually issued to me 5% of the shares of WORLD COMMUNICATIONS CORPORATION - the first corporation organized by MATSCHINER to engage in the communications business and of which he was a shareholder (Ex. "1" hereto).

8. As to the second and third counts, it is to be noted that none of the defendants have denied the allegations thereof. There is therefore not only lacking any reason for dismissing these counts but an admission of the allegations set forth therein.

I am advised by my attorney that the arguments

AFFIDAVIT OF GEORGE J. WEINER, JR. IN OPPOSITION TO
MOTION TO DISMISS COMPLAINT

advanced with respect to the applicability of the statute of frauds and the principle of res judicata are plainly not applicable to the issues posed in these two counts.

9. As to the motion to dismiss the fourth count, defendant MATSCHINER advances an "explanation" of his version of the events which led to the utilization of my name in a Dun & Bradstreet Report. Such an "explanation" does not, however, suffice to absolve him of liability, without a plenary trial as to the issues raised by his "explanation".

10. Nor is there any merit to MATSCHINER's claim that the fourth count should be dismissed because of the one-year statute of limitations applicable to causes pleaded under the New York Civil Rights Law, §51. I respectfully suggest that the fact that the Dun & Bradstreet Report was issued in April 1968, and that I knew thereof as early as June 1968, is not determinative. Dun & Bradstreet Reports are disseminated and re-issued and will, upon request of its customers and subscribers, be supplied out of the Dun & Bradstreet files and archives. There is therefore present in this case a factor of a "continuing use", which precludes the invocation of the one-year statute of limitations. The date of the first issuance of the Report is not the "measuring date" for the appropriate statute of limitations.

AFFIDAVIT OF GEORGE J. WEINER, JR. IN OPPOSITION TO
MOTION TO DISMISS COMPLAINT

11. In any event, I respectfully request the Court to view my pleading of the fourth count as one based upon MATSCHINER's tortious wrong, for which recovery may be obtained, apart from the rights afforded under §51 of the New York Civil Rights Law. Should this Court, however, decide that the fourth count of my complaint must be read as being based solely upon a violation of my rights under §51 of the New York Civil Rights Law, I respectfully request that I be granted permission to replead that count, so that it may be read in less limited fashion.

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK

World Communications Corporation

AUTHORIZED TO ISSUE 600 SHARES

200 PREFERRED NON-VOTING SHARES
WITHOUT PAR VALUE

200 CLASS A COMMON NON-VOTING SHARES
WITHOUT PAR VALUE

200 CLASS B COMMON VOTING SHARES,
WITHOUT PAR VALUE

This Certifies that

GEORGE WEINER

is the owner of

-- Fifteen --

fully paid and non-assessable shares

of the Class A Common Non-Voting Shares of WORLD COMMUNICATIONS CORPORATION

*transferable only on the books of the Corporation by the holder hereof in person or by
duly authorized Attorney upon surrender of this Certificate properly endorsed.*

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and to be sealed with the Seal of the Corporation
this 13th day of May 1963

John W. McElroy
SECRETARY-TREASURER

Charles J. McElroy
PRESIDENT

EXHIBIT 1--STOCK CERTIFICATE.

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AFFIDAVIT OF MICHAEL PATESTIDES IN SUPPORT OF MOTION
TO DISMISS COMPLAINT.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x

GEORGE J. WEINER, JR.,	:	
	:	73 Civ. 1508
Plaintiff,	:	
	:	
-against-	:	<u>AFFIDAVIT</u>
	:	
PAUL MATSCHINER, MICHAEL	:	
KULUKUNDIS, et al.,	:	
	:	
Defendants.	:	
	:	

-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

MICHAEL PATESTIDES, being duly sworn, deposes and
says:

I am the attorney for the defendants, MICHAEL
KULUKUNDIS and CALLIOPE KULUKUNDIS, and am fully familiar
with the facts and proceedings in this action.

This affidavit is submitted in support of the
application for the individual defendants, CALLIOPE
KULUKUNDIS and MICHAEL KULUKUNDIS, and in conjunction with
the application of the defendant Ram Companies for dismissal
of the complaint pursuant to Rule 12 (b) of the Federal
Rules of Civil Procedure, or, in the alternative, to require

AFFIDAVIT OF MICHAEL PATESTIDES IN SUPPORT OF MOTION
TO DISMISS COMPLAINT

plaintiff to give security for costs.

I have read the affidavit of PAUL A. MATSCHINER, sworn to the 1st day of May, 1973, and the statements made therein are true and correct in every respect, and are deemed adopted and made a part hereof. The pleadings and facts are set forth in said affidavit of PAUL A. MATSCHINER.

I have also read the memorandum of law submitted by Donald L. Kuba of the firm of Warshaw, Sylvester, Burstein & Franks, and adopt said memorandum of law in its totality and make same a part hereof collectively in support of the instant application for dismissal of the complaint.

WHEREFORE, your deponent respectfully requests that the individual and corporate defendants' application to dismiss the complaint, or in the alternative, for security for costs, be granted.

s/ Michael Patestides
Michael Patestides

Sworn to before me this

21st day of May, 1973.

s/ Clara R. Stanton
Notary Public .

CLARA R. STANTON
Notary Public, State of New York
No. 30-9153820
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1974.

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GEORGE J. WEINER, JR.

Plaintiff, :

-against-

PAUL MATSCHINER, MICHAEL KULUKUNDIS, : NOTICE OF APPEAL
CALLIOPE KULUKUNDIS, DONALD L. KUBA, :
JOSEPH ROSENTHAL, RAM BROADCASTING :
CORPORATION, RAM BROADCASTING OF :
CALIFORNIA, INC., RAM BROADCASTING OF : 73 Civ. 1508 (LWP)
COLORADO, INC., RAM BROADCASTING OF :
CONNECTICUT, INC., RAM BROADCASTING OF :
FLORIDA, INC., RAM BROADCASTING OF :
INDIANA, INC., RAM BROADCASTING OF :
LOUISIANA, INC., RAM BROADCASTING OF :
MASSACHUSETTS, INC., RAM BROADCASTING OF :
OF MICHIGAN, INC., RAM BROADCASTING OF :
MISSOURI, INC., RAM BROADCASTING OF :
NEVADA, INC., RAM BROADCASTING OF NEW :
MEXICO, INC., RAM BROADCASTING OF OHIO, :
INC., RAM BROADCASTING OF OREGON, INC., :
RAM BROADCASTING OF SOUTH CAROLINA, INC., :
RAM BROADCASTING OF TEXAS, INC., and :
RAM BROADCASTING OF WASHINGTON, INC., :

Defendants. :

S I R S :

NOTICE IS HEREBY GIVEN that George A. Weiner, Jr.,
the plaintiff above named, appeals to the Court of Appeals for
the Second Circuit from the order dated December 3, 1973 and
entered in this action on December 5, 1973, insofar as it granted
the defendants' motion to dismiss the First, Second, Third and
Fourth Counts of the complaint and dismissed said counts.

Dated, New York, New York
December 31, 1973.

Yours, etc.,

LLOYD I. ISLER
Attorney for Plaintiff
Office & P. O. Address
405 Lexington Avenue
New York, New York 10017
(212) 986-4900

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NOTICE OF APPEAL

TO:

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